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PLEASE RETURN SPECIAL IMPROVEMENT DISTRICT HANDBOOK

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Prepared by
Montana League of Cities and Towns



Department of Commerce
STATE OF MONTANA
Community Development Division

INTRODUCTION

This handbook is designed to assist municipal officials in the creation of special improvement districts (SID's). It is an update of an earlier document which was prepared by the Montana League of Cities and Towns, "Special Improvement District Guidebook".

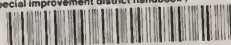
The handbook will hopefully provide practical guidance on the steps to take, and to avoid, in creating SID's. While it contains references to Montana statutes, it is not a substitute for local legal counsel. In all cases, cities and towns are urged to work with their attorneys in establishing SID's. It should also be noted that, under legislation passed in 1983, local governments may now pay for assistance from attorneys, brokerage firms, or others in issuing bonds (M.C.A. 7-7-4254). Cities and towns are also encouraged to develop their own policies for creating SID's--policies which, within the framework of state law, reflect the direction their community wishes to take.

A number of municipal officials were extremely helpful in the preparation of the handbook and appreciation is expressed for their efforts: Edward J. Gallagher, Community Development Director, City of Kalispell; Mike Money, Assistant Planner, Bozeman City-County Planning Board; Don Peoples, Butte-Silver Bow Chief Executive; Al Thelen, Billings City Administrator; and Bill Verwolf, Assistant City Manager of Helena.

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Special improvement district handbook /



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1. REQUEST TO CREATE THE SID

Although state law does not expressly make provision for petitions signed by property owners, they may provide the impetus for the creation of SID's, or SID's may be initiated by the city or town council. In either case, the SID must be for one or a combination of the purposes allowed by state law. M.C.A. 7-12-4102 authorizes SID's for the following purposes:

- paving
- sidewalks
- curbs and gutters
- sanitary and storm sewer lines
- waterworks and mains
- appliances for fire protection
- culverts
- bridges
- devices to protect the public from open irrigation ditches
- swimming pools
- other recreation facilities.

In addition, SID's can be created for:

- offstreet parking (M.C.A. 7-12-4165)
- lighting streets (M.C.A. 7-12-4304)
- maintenance of streets, which can include sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal, and leaf and debris removal (M.C.A. 7-12-4401).

Property outside the city, but which abuts the city, can be included in an SID if 60 percent or more of the property owners approve (M.C.A. 7-12-4102).

2. COST ESTIMATES

Before any formal action is taken by the council, cost estimates should be prepared. This can be done by the city engineer, by a consultant, or some combination of the two. M.C.A. 7-12-4119 provides that, in cities where there is no city engineer, the council may appoint a person to perform those duties.

The cost estimate should define the scope of the SID and the estimated annual cost to each property owner in the proposed district. Some municipalities have been surprised by actual costs which were considerably in excess of estimates; for this reason, it might be well to have a range of cost estimates prepared--low, high, and best estimates.

3. RESOLUTION OF INTENTION

Policy Questions

The first legal step in the creation of an SID is the adoption of a resolution of intention by the council. It is at this stage that the council should consider policy questions concerning the proposed SID. Among the questions the council may deal with are:

- Are the cost estimates "reasonable" in view of then current construction costs in the community?
- Are the cost estimates likely to be affordable by the property owners in the proposed district?
- What is the tax delinquency rate in the proposed district?
- If a developer is involved, is there any history of delinquencies in the payment of SID assessments?
- Does the city want to protect itself against the risk of a loss on the new development by limiting the amount that is improved at one time, or by limiting the number of lots in a subdivision that may receive initial approval?
- Is the bond market likely to generate favorable interest rates?
- Will the city experience unusual difficulties selling the SID bonds?
- Does the proposed SID clearly delineate which costs are to be paid by the property owners and which, if any, might be the responsibility of the city at large?
- Does the city wish to state, in the resolution of intention, that if the bonds do not sell, any costs incurred by the city (such as engineering estimates) are to be paid by the property owners in the proposed district?
- How will the city deal with a situation where actual SID costs are considerably higher than preliminary estimates?
- How will the city handle delinquencies in the payment of special assessments?

- Does the city wish to create an SID revolving account?
- In the judgment of the council, is the proposed SID in the public interest?
- Will the assessments be paid on a front-foot basis, an area basis, or a combination, as described in M.C.A. 7-12-4162, 4163, 4164 and 4165?
- Will the council include in the project costs what it incurs in preparing plans, maps, engineering, inspection and preparation of assessment rolls? Under M.C.A. 7-12-4169, this is discretionary with the council and may equal up to five percent of the bonds or warrants issued for the SID.

Not all of the questions above have ready remedies in the law. They often require judgment calls on the part of the council. They are presented, however, so that they can be considered before an SID is created and before possible damage is uncorrectable.

It should also be noted that a jurisdiction with self-government powers probably has more flexibility in terms of the process to follow. For example, it might wish to secure a performance bond to guarantee payment of assessments. General government cities, on the other hand, can only do those things expressly allowed by state law and are not authorized to secure performance bonds for SID's.

The Resolution

Once the council has satisfied itself with these and other policy issues that may arise, it adopts a resolution of intention to create the SID. The resolution should be prepared by the city attorney. Its primary purpose is to notify property owners in the proposed district of the special improvement. The resolution must include:

- the number of the district
- the district's boundaries
- the nature of the improvements
- a cost estimate for the improvements (M.C.A. 7-12-4104)
- if it is a lighting district, an estimate of the annual cost of electricity and maintenance (M.C.A. 7-12-4303).

In the case of a maintenance district (formerly termed a "sprinkling district"), the resolution may divide the whole city or part of the city into districts. (M.C.A. 7-12-4403).

4. NOTIFICATION OF PROPERTY OWNERS

Notice of passage of the resolution of intention must be published by the city clerk for five* days in a daily newspaper in the city or in one issue of a weekly newspaper. If there is no newspaper in the city, the notice must be posted for five* days in three public places in the city. In addition, a copy of the notice must be mailed to each property owner in the proposed district (M.C.A. 7-12-4106).

The notice must describe the proposed improvement in general terms, its estimated cost, and when and where the council will meet to hear protests (M.C.A. 7-12-4106).

* Notices to create maintenance districts must be published three times in a daily newspaper or in a weekly newspaper for two successive issues, or if there is no newspaper in the city, posted for ten days in three public places (M.C.A. 7-12-4406).

5. PROTEST HEARING

Any time within 15 days after the notice of resolution is published or posted, any property owner in the proposed district may protest. The protest must be in writing and delivered to the city clerk (M.C.A. 7-12-4110) who endorses each protest with the date and hour of receipt.

At the hearing, the council considers all protests and acts on them. If over 50 percent* of the property owners in the proposed district protest, nothing further can be done for at least six months. But, if this is not the case, or if the council determines that the protests are insufficient or lacking in merit, it can proceed to create the SID (M.C.A. 7-12-4112 and 4113).

* If the proposed SID is for a sewer, the protest can be overruled by a majority of the council, unless it is signed by over 75 percent of the property owners (M.C.A. 7-12-4113).

If the proposed SID is for a maintenance district, a protest signed by 40 percent of the owners can delay the district for one year (M.C.A. 7-12-4407).

6. CREATION OF THE SID

If no protests have been made or if made and rejected, the council is authorized to formally create the SID. This requires a resolution, prepared by the attorney, and approved by the council (M.C.A. 7-12-4114).

7. CONSTRUCTION BIDS

Bid Call

Once the resolution is adopted creating the SID, the city then calls for bids for the proposed improvements. However, in the case of a maintenance district, the work may be done by the city crews (M.C.A. 7-12-4404). Notice calling for bids must be published at least twice in a paper in the city, or, if there is none, it must be posted in at least three public places (M.C.A. 7-12-4141).

Bids must be accompanied by security specified in M.C.A. 18-1-2 and must be delivered to the city clerk. The bids are opened no less than 10 days from the date of final publication of the notice (M.C.A. 7-12-4141).

Council Action

The bids must be opened in a public session of the council (M.C.A. 7-12-4142). The council may award the contract to the "lowest responsible bidder", or to the owners of over 50 percent of the frontage of the proposed district (M.C.A. 7-12-4143 and 4145). The council may also reject all bids and may reject bids of anyone who has been delinquent in any former contract with the city (M.C.A. 7-12-4143).

If the bids are rejected, or if no bids are received, the council may readvertise any time within two years (M.C.A. 7-12-4144).

The owners of three-fourths of the frontage may, within three days after the award to the lowest responsible bidder, contract to do the work themselves at a price at least five percent less than the award amount (M.C.A. 7-12-4147). If this is not done, the council must then contract with the successful bidder (M.C.A. 7-12-4148).

If the contractor fails to actually contract with the city to do the work within 15 days after notice of the award, the council must again advertise and, if no bids are received, the council may readvertise at any time within the next six months (M.C.A. 7-12-4149).

If the contractor defaults after the contract is entered into, the city engineer must report this fact to the council, which may relet the unfinished work (M.C.A. 7-12-4152).

All contractors for street work must furnish a performance bond of no less than 25 percent of the contract amount (M.C.A. 7-12-4151).

8. FINANCING THE IMPROVEMENTS

General

The city must determine how funds will be raised for the improvements. The most common method is through the sale of SID bonds or warrants; this procedure will be discussed below. Some cities find, however, that it is not practical or even possible to sell bonds. Factors that may work against them are:

- The dollar amount of the issue may be too small to interest a brokerage firm or other financial institution. These firms must incur fixed costs (such as bond counsel and printing of bonds) irrespective of the size of the issue.

- Interest rates realized in the bond market may be too high to make the project feasible.*

If conditions such as those described above exist, the city may wish to examine alternative funding devices. For example, it could sell the obligations outright to a private individual. This has been done by some municipalities on smaller issues.

A city may also consider using the state's capital investment pool. Under legislation passed in 1983, local governments can secure loans, or the state can buy local bonds, in amounts up to \$500,000. This program, administered by the Department of Commerce, allows local governments to pool their debts and reduce marketing and interest costs (Title 17, Chapter 5, part 16, M.C.A.). Whatever method is chosen, the city should have necessary financial information readily available: annual budgets, revenue and expenditure histories and trends, other indebtedness, tax rates, tax collections, etc.

* Under legislation passed in 1981 and made permanent in 1983, the interest rate ceiling on all municipal bonds, including SID's, has been removed.

Selling Bonds

If the city chooses to sell bonds for the SID, it must follow the same procedure for notice of sale, publication of notice and manner of selling the bonds specified in the law for general obligation bonds (M.C.A. 7-12-4204). Notice of the sale must be published once a week for four weeks in a newspaper in the city, or in the county, if none exists in the city. The clerk must send a copy of the notice to the State Board of Investments at least 15 days before the sale of the bonds (M.C.A. 7-7-4252, et seq.). Bonds may extend over a period of not more than 20 years* and can be called (redeemed) at any time by the city (M.C.A. 7-12-4203). The bonds are issued to the highest and best bidder (M.C.A. 7-12-4204).

The proceeds of the bond sale not required for payments to a contractor may be invested in time deposits or in obligations of the United States government, payable within 180 days from the date of investment (M.C.A. 7-12-4207).

Throughout the process of creating an SID, but particularly when bonds are sold, the city should work closely with its attorney or with bond counsel.

* Lighting district bonds may extend over a period of not more than eight years (M.C.A. 7-12-4342).

9. CONSTRUCTION

After the construction contract is awarded and the bonds are sold, actual construction work can be authorized by the city.

Either through its own engineer or someone hired for that purpose, the city should supervise and inspect the construction to see that it is being done on time and according to design and financial plans.

Payments to the contractor can be made from time to time on estimates of the engineer, or on completion of the improvements (M.C.A. 7-12-4205). The engineer must keep an account of all costs incurred and certify them to the city clerk (M.C.A. 7-12-4121).

10. LEVY OF ASSESSMENTS

By resolution, the council must levy and assess a tax in the district to retire its indebtedness (M.C.A. 7-12-4176).

A notice, stating that the resolution is on file with the city clerk and subject to inspection for five days, must be published in a newspaper in the city. The notice must state the time and place at which objections to the resolution will be heard by the council (M.C.A. 7-12-4177).

The council, after hearing any objections, may modify the resolution and then must deliver a copy to the city treasurer within two days (M.C.A. 7-12-4178).

The city may also establish a maintenance fund for the district, or for several districts, designed to defray costs associated with annual maintenance of the district (M.C.A. 7-12-4179).

In cities where taxes are collected by the city treasurer, special assessments are collected by the city treasurer in the same manner and times as general taxes (M.C.A. 7-12-4181). In cities where general taxes are collected by the county, the city may, by ordinance, choose to have special assessments collected by the city treasurer, or it may have the special assessments collected by the county, along with general taxes (M.C.A. 7-12-4181 and 4183).

SID payments are payable before 5 p.m. on November 30, except a city may, by resolution, provide for payment of one-half the assessment on November 30 and one-half on May 31 of the following year (M.C.A. 7-12-4188).

If one SID payment is delinquent, that is, by one property owner, the council may, by resolution, determine that all payments are delinquent and the property must then be sold (M.C.A. 7-12-4182 and 4183). However, the city may subsequently reinstate the assessment if it is paid (M.C.A. 7-12-4184).

11. SID REVOLVING FUNDS

The council must create an SID revolving fund for the purpose of paying SID bonds and warrants (M.C.A. 7-12-4221). In order to provide funds for the revolving fund, the council:

- may transfer moneys to the revolving fund from the general fund, which is considered a general fund loan;
- may also include in the cost of the improvements to be defrayed from the proceeds of the bonds or warrants up to five percent of the principal amount of the bonds or warrants, and deposit it in the revolving fund;
- must, in addition to or instead of any general fund transfer, levy for the revolving fund a city-wide tax to cover the needs of the revolving fund. However, the tax cannot be levied if the balance in the revolving fund exceeds five percent of the outstanding bonds and warrants (M.C.A. 7-12-4222).

When there is insufficient money in a district fund to pay bonds and warrants that are due, the council may make up the deficiency by a loan from the revolving fund (M.C.A. 7-12-4223). When there is an amount in the revolving fund in excess of the amount deposited under M.C.A. 7-12-4169 (that is, five percent of the amount of the bonds for administrative costs) and in excess of five percent of the outstanding bonds and warrants and if the council considers the excess unnecessary to retire the indebtedness, the council may:

- transfer the excess to the general fund; or
- use the excess to purchase property at sales for delinquent taxes and against which there are unpaid SID assessments (M.C.A. 7-12-4227).

The council may, by ordinance, create a supplemental revolving fund out of the net revenues of parking meters to retire bonds and warrants issued to improve streets, alleys, curbs and gutters. This requires a vote of a majority of the electors voting on the question (M.C.A. 7-12-4243).

DELINQUENT SID BONDS

Problems with delinquent SID bonds have been experienced by Montana cities. In a notable instance, payments on a \$3.8 million SID became delinquent when lots in a development failed to sell. The issues involved in this delinquency are being considered by the courts. The city attorney involved in the case argued that the municipal government was obligated to pay only the interest on the bonds, and not the principal, from any available revenues, including the general fund.

The city involved in this case has developed some practical policies to avoid future problems with delinquent SID bonds. They include:

1. Requiring three years' advance payment on SID bonds in escrow.
2. Taking a conservative approach to SIDs by limiting the sale of bonds to "relatively" small amounts.

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